**DATED:**

**St Mary’s University, Twickenham**

**and**

**CONSULTANCY AGREEMENT VIA A SERVICE COMPANY**

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**This agreement** is dated .

# BETWEEN

1. St Mary’s University, Twickenham, Waldegrave Road, Twickenham, TW1 4SX (**the** University).
2. [**FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [**NUMBER**] whose registered office is at [**REGISTERED OFFICE ADDRESS**] (**the** Consultant Company).

# AGREED TERMS

# Interpretation

## The following definitions and rules of interpretation in this clause 1 apply in this agreement (unless the context requires otherwise).

Board: the board of governors of the University (including any committee of the board duly appointed by it).

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

University Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the University or its students or business contacts, and any equipment, keys, hardware or software provided for the use of the Consultant Company or the Individual by the University during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant Company or the Individual on the computer systems or other electronic equipment of the University and the Consultant Company or the Individual during the Engagement.

Commencement Date: [**DATE**]

Confidential Information: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, students, affairs and finances of the University for the time being confidential to the University and trade secrets including, without limitation, technical data and know-how whether or not such information (if in anything other than oral form) is marked confidential.

Engagement: the engagement of the Consultant Company by the University on the terms of this agreement.

Individual : [**NAME**]

Insurance Policies: professional indemnity insurance cover, employer's liability insurance cover and public liability insurance cover (if applicable).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Consultant Company or by the Individual in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Pre-Contractual Statement: any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement.

Services: the services provided by the Consultant Company or by the Individual in a consultancy capacity for the University as more particularly described in Schedule 1.

Substitute: a substitute for the Individual appointed under the terms of clause 3.3.

Termination Date: the date of termination of this agreement, howsoever arising.

Works: all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant Company or the Individual in the provision of the Services.

## The headings in this agreement are inserted for convenience only and shall not affect its construction.

## A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## The Schedule forms part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

# Term of engagement

## The University shall engage the Consultant Company and the Consultant Company shall make available to the University the Individual to provide the Services on the terms of this agreement.

## The Engagement shall commence on the Commencement date and shall continue for a period of one year ending on [**INSERT DATE**] unless terminated:

### as provided by the terms of this agreement; or

### by either party giving to the other not less than four week(s) prior written notice.

# Duties and obligations

## During the Engagement the Consultant Company shall, and (where appropriate) shall procure that the Individual shall:

### provide the Services with all due care, skill and ability and use its or his best endeavours to promote the interests of the University; and

### unless the Individual is prevented by ill health or accident, devote at least X days [in each calendar month] [per annum] to the carrying out of the Services together with such additional time if any as may be necessary for their proper performance.

## If the Individual is unable to provide the Services due to illness or injury, the Consultant Company shall advise the University of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided.

## The Consultant Company may, with the prior written approval of the Vice-Chancellor and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual, provided that the Substitute shall be required to enter into direct undertakings with the University, including with regard to confidentiality. If the University accepts the Substitute, the Consultant Company shall continue to invoice the University in accordance with clause 4 and shall be responsible for the remuneration of the Substitute. For the avoidance of doubt, the Consultant Company will continue to be subject to all duties and obligations under this agreement for the duration of the appointment of the Substitute. *[NB Recruiting manager must discuss with HR whether this clause is applicable].*

## The Consultant Company shall use reasonable endeavours to ensure that the Individual is available at all times on reasonable notice to provide such assistance or information as the University may require.

## Unless it or he has been specifically authorised to do so by the University in writing:

### neither the Consultant Company nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the University; or

### the Consultant Company shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the University.

## The Consultant Company shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the health and safety procedures of the University from time to time in force at the premises where the Services are provided and report to the University any unsafe working conditions or practices.

## The Consultant Company shall procure that the Individual shall comply with the policies of the University on social media, use of information and communication systems, anti-harassment and bullying, no smoking, dress code, substance misuse and anti-corruption and bribery policy and procedures and the Bribery Act 2010.

## The Consultant Company may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

### the University will not be liable to bear the cost of such functions; and

### at the request of the University the third party shall be required to enter into direct undertakings with the University, including with regard to confidentiality.

## The Consultant Company shall, and shall procure that the Individual shall:

### comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

### not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

### comply with the Ethics and Anti-bribery and Anti-corruption Policies of the University;

### have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 3.9.2, and will enforce them where appropriate.

### promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Consultant Company or the Individual in connection with the performance of this agreement;

### ensure that all persons associated with the Consultant Company or other persons who are performing services or providing goods in connection with this agreement comply with this clause 3.9.

## Failure to comply with clause 3.9 may result in the immediate termination of this agreement.

# Fees

## The University shall pay the Consultant Company a fee of £XX per day inclusive of VAT for a 7 hour day. On the last working day of each month during the Engagement the Consultant Company shall submit to the University an invoice which gives details of the hours the Individual or any Substitute has worked during the month, the Services provided and the amount of the fee payable (plus VAT, if applicable) for the Services during that month.

## In consideration of the provision of the Services during the Engagement, the University shall pay each invoice submitted by the Consultant Company in accordance with clause 4.1 within 30 day(s) of receipt.

## The University shall be entitled to deduct from the fees (and any other sums) due to the Consultant Company any sums that the Consultant Company or the Individual may owe to the University at any time.

## Payment in full or in part of the fees claimed under clause 4 or any expenses claimed under clause 5 shall be without prejudice to any claims or rights of the University against the Consultant Company or the Individual in respect of the provision of the Services.

# Expenses

## The University shall reimburse all reasonable travel expenses properly and necessarily incurred by the Consultant Company or the Individual in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.

## If the Individual is required to travel abroad in the course of the Engagement the Consultant Company shall be responsible for any necessary insurances, inoculations and immigration requirements.

# Other activities

## Nothing in this agreement shall prevent the Consultant Company or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

### such activity does not cause a breach of any of the obligations of the Consultant Company under this agreement

### the Consultant Company shall not, and shall procure that the Individual shall not engage in any such activity which is similar to or in any way competitive with the University without the prior written consent of the Vice-Chancellor.

### the Consultant Company shall give priority to the provision of the Services to the University over any other business activities undertaken by the Consultant during the course of the Engagement

# Confidential information

## The Consultant Company acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultant Company has therefore agreed to accept the restrictions in this clause 7.

## The Consultant Company shall not, and shall procure that the Individual shall not (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

### any use or disclosure authorised by the University or required by law; or

### any information which is already in, or comes into, the public domain otherwise than through the unauthorised disclosure of the Consultant Company or the Individual.

## At any stage during the Engagement, the Consultant Company will promptly on request return all and any University Property in its or the Individual’s possession to the University.

# Data protection

## The Consultant Company shall procure that the Individual consents to the University holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Consultant, as appropriate:

### information about the Individual’s physical or mental health or condition to monitor sickness absence;

### the Individual’s racial or ethnic origin or religious or similar beliefs to monitor compliance with equal opportunities legislation; and

### information relating to any criminal proceedings in which the Individual has been involved for insurance purposes and to comply with legal requirements and obligations to third parties.

## The Consultant Company consents (and shall procure that the Individual consents) to the University making such information available to those who provide products or services to the University such as advisers, regulatory authorities, governmental or quasi governmental organisations.

## The Consultant Company consents (and shall procure that the Individual consents) to the transfer of such information to business contacts of the University outside the European Economic Area in order to further its business interests.

## The Consultant Company shall comply, and shall procure that the Individual shall comply, with the data protection policy of the University and relevant obligations under the Data Protection Act 1998 and associated codes of practice when processing personal data relating to any employee, worker, customer, University, supplier or agent of the University.

# Intellectual property

## The Consultant Company warrants to the University that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights and a written irrevocable waiver of all the Individual’s statutory moral rights in the Works, to the fullest extent permitted by law, and the Individual has agreed to hold on trust for the Consultant Company any such rights in which the legal title has not passed (or will not pass) to the Consultant Company. The Consultant Company agrees to provide to the University a copy of this assignment on or before the date of this agreement..

## The Consultant Company hereby assigns to the University all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant Company holds legal title in these rights and inventions on trust for the University.

## The Consultant Company undertakes to the University:

### to notify to the University in writing full details of any Inventions promptly on their creation;

### to keep confidential the details of all Inventions;

### whenever requested to do so by the University and in any event on the termination of the Engagement, promptly to deliver to the University all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its or the Individual’s possession, custody or power;

### not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the University; and

### to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the University,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

## The Consultant Company warrants to the University that:

### it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;

### it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and

### the use of the Works or the Intellectual Property Rights in the Works by the University will not infringe the rights of any third party

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

## The Consultant Company agrees to indemnify the University and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the University, or for which the University may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant Company to the University during the course of providing the Services. The Consultant Company shall maintain adequate liability insurance coverage and ensure that the interest of the University is noted on the policy, and shall supply a copy of the policy to the University on request. The University may at its option satisfy this indemnity (in whole or in part) by way of deduction from any payments due to the Consultant Company.

## The Consultant acknowledges that no further fees or compensation other than those provided for in this agreement is or may become due or may become due to the Consultant Company in respect of the performance of its obligations under this clause 9.

## The Consultant Company undertakes, at the expense of the University, at any time either during or after the Engagement, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of Vice-Chancellor, be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of the University and to defend the University against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works and the Inventions. The Consultant Company confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

## The Consultant Company irrevocably appoints the University to be its attorney in its name and on its behalf to execute documents, use the name of the Consultant Company and do all things which are necessary or desirable for the University to obtain for itself or its nominee the full benefit of this clause. A certificate in writing, signed by any director or the secretary of the University, that any instrument or act falls within the authority conferred by this agreement shall be conclusive evidence that such is the case so far as any third party is concerned.

# Insurance and liability

## The Consultant Company shall have personal liability for and shall indemnify the University for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant Company or the Individual or a Substitute engaged by the Consultant of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.

## The Consultant Company shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the University and that the level of cover and other terms of insurance are acceptable to and agreed by the University.

## The Consultant Company shall on request supply to the University copies of the Insurance Policies and evidence that the relevant premiums have been paid.

## The Consultant Company shall notify the insurers of the interest of the University and shall cause the interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by the University against the Consultant Company in respect of which the Consultant Company would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the University directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the University, the Consultant Company shall use all insurance monies received by it to indemnify the University in respect of any claim and shall make good any deficiency from its own resources.

## The Consultant Company shall comply (and shall procure that the Individual complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant Company is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant Company shall notify the University without delay.

# Termination

## Notwithstanding the provisions of clause 2.2, the University may terminate the Engagement with immediate effect with no liability to make any further payment to the Consultant Company (other than in respect of amounts accrued before the Termination Date) if at any time:

### the Consultant Company or the Individual commits any gross misconduct affecting the University; or

### the Consultant Company or the Individual commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the University; or

### the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or

### the Consultant Company or the Individual is, in the reasonable opinion of the Board negligent or incompetent in the performance of the Services; or

### the Individual declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984; or

### the Consultant Company makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is make or an administrator or receiver is appointed in relation to the Consultant Company;

### the Individual is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 30 day(s) in any 52-week consecutive period; or

### the Individual does not own all of the issued share capital (from time to time) of the Consultant Company;

### the Consultant Company or the Individual commits any fraud or dishonesty or acts in any manner which in the opinion of the Vice-Chancellor brings or is likely to bring the Consultant or the University into disrepute or is materially adverse to the interests of the University; or

### the Consultant Company or the Individual commits any breach of the policies and procedures of the University; or

### the Consultant Company or the Individual commits any offence under the Bribery Act 2010.

## The rights of the University under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant Company as having brought the agreement to an end. Any delay by the University in exercising its rights to terminate shall not constitute a waiver of these rights.

# Obligations on termination

## On the Termination Date the Consultant Company shall, and shall procure that the Individual shall:

### immediately deliver to the University all University Property in its or his possession or under its or his control;

### irretrievably delete any information relating to the business of the University stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its or his possession or under its or his control outside the premises of the University. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and

### provide a signed statement that it or he has complied fully with its or his obligations under this clause 12, together with such evidence of compliance as the University may reasonably request.

# Status

## The relationship of the Consultant Company (and the Individual) to the University will be that of independent contractor and nothing in this agreement shall render it (nor the Individual) an employee, worker, agent or partner of the University and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.

## This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant Company shall be fully responsible for and shall indemnify the University for and in respect of:

### any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Consultant Company shall further indemnify the University against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the University in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the negligence or wilful default of the University; and

### any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the University arising out of or in connection with the provision of the Services.

## The University may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant Company.

## The Consultant Company warrants that it is not nor will it prior to the cessation of this agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

# Notice

## Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

### delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or (in the case of the Consultant) his last known address; and

### sent by email to its usual email address.

## Any notice or communication shall be deemed to have been received:

### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

### if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; or

### if sent by email, at 9.00 am on the next business day after transmission.

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

# Entire agreement

## This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

## Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## Nothing in this clause shall limit or exclude any liability for fraud.

# Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# Counterparts

This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

# Third party rights

## A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

# Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

# Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been entered into by the parties and has been executed as a deed by [**NAME OF CONSULTANT COMPANY**] and is delivered and takes effect on the date stated at the beginning of it.

|  |  |  |
| --- | --- | --- |
| Signed by Jo Blunden for and on behalf of St Mary’s University, Twickenham |  | ........................................ |

|  |  |  |
| --- | --- | --- |
| Executed as a deed by [**NAME OF CONSULTANT**  **COMPANY**] acting by [**NAME OF DIRECTOR**], a  director, in the presence of: |  | ...................................  Signature of Director t |
| SIGNATURE OF WITNESS  NAME  ADDRESS  OCCUPATION OF WITNESS] |  |  |

**Enclosure:**

Parabilis Supplier Registration form

Schedule 1

Services

|  |  |
| --- | --- |
| Details of the services to be carried out: |  |
| The location(s) where the services are to be performed: |  |
| Person to whom the Consultant Company/ Individual should report: |  |